



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 9, 1996

Ms. Marva M. Gay
Assistant County Attorney
Harris County
1001 Preston, Ste. 634
Houston, Texas 77002-1891

OR96-0509

Dear Ms. Gay:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Originally, this office ruled on your request for a decision in OR96-0349. After reviewing your supplementary letter, however, we withdrew that decision on March 19, 1996. Consequently, we have re-examined your request and issue this new ruling. Your request was assigned ID# 39507.

You state that Harris County ("the County") received a request for information asking for

any and all information in the Harris County Constable's files concerning any applications, training accommodations, reprimands, complaints, grievances or disciplinary actions pertaining to Precinct Four Officer Robert L. Norris #04257, for the period from January 1991 to the present date, including any and all information regarding all internal investigations of such complaints, the final determination of such complaints, and copies of any and all letters advising of disciplinary action regarding such complaints.

You claim that the requested information is excepted from required public disclosure under sections 552.103(a) and 552.117 of the Government Code. You submitted for our review in your original request the documents that you believed were responsive to the information request.

To show that section 552.103(a) is applicable, the county must demonstrate that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related

to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the county must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 (1989) at 5. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

In your initial brief to this office you claimed that the county and Officer Norris were involved in a pending criminal action against a felony defendant. You have subsequently informed this office that the criminal action was dismissed. Thus, the county is no longer involved in pending litigation. You have not met your burden under section 552.103(a); therefore, you cannot withhold the requested information pursuant to section 552.103.

You additionally claim that certain information contained within the submitted documents is excepted from public disclosure by Section 552.117 of the Government Code. Section 552.117 provides that information may be withheld if it is

information that relates to the home address, home telephone number, social security number, or that reveals whether the following person has family members:

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code.

Since Section 552.117 excepts from required disclosure peace officers' home addresses, home telephone numbers, social security numbers, and information revealing whether the officers have family members, this information must be withheld from disclosure. CODE CRIM. PROC. art. 2.12(2) (deputy constables are "peace officers"); Open Records Decision Nos. 532 (1989), 530 (1989).

We also note that some of the information submitted for our review did not appear to be responsive to the request for information. We marked the apparently unresponsive information which we returned to you with our ruling in OR96-0349; we do not rule here on the disclosure of that information.

Furthermore, some of the information submitted for our review is confidential by law and is, therefore, excepted from required public disclosure pursuant to section 552.101. Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. We have marked one document as an example of the information that is confidential by law, and therefore, excepted from disclosure by section 552.101. We caution that the records submitted to this office for review may contain other information deemed confidential by law which should not be made public. See Open Records Decision No. 195 (1978). See

also Gov't Code § 552.352 (distribution of confidential information is criminal offense). We have included for your review a sampling of common types of information deemed confidential.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, flowing style.

Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref.: ID# 39507

enclosures: List of Confidential Information

cc: Mr. Richard L. Moore
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(w/enclosure)